IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.275 OF 2004

1. Union of India,
through Secretary, Ministry
of Health & Family Welfare,
Nirman Bhavan,
New Delhi- 110001

2. Director General,
Directorate General of
Health Services, Nirman Bhavan,
New Delhi 110001

3. Director, All India Institute
of Physical Medicine and
Rehabilitation, Haji Ali Park,
Haji Ali, Mumbai 400 034. ....Petitioners.

V/s

Shri Jangam Anant Amrutling,
C-202 Om Anand, Tilak Nagar,
Near Tilak Nagar School,
Dombivli (East), Thane Dist. ....Respondent.

Mr. V.S. Masurkar for the petitioners.
Ms. D. Fernandes for the respondent.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE : 13th June, 2006

ORAL JUDGMENT (Per V.M. Kanade, J.)

1. By this Petition, petitioner is challenging the order passed by the Central Administrative Tribunal (For short "CAT") whereby a direction was given to the

Union of India by the CAT not to recover any excess amount paid to the respondent and with further direction that if any amount has already been recovered in consequence of the orders passed after refixation of the respondent's pay-scale in the scale of Rs 1320-2040, the same shall be refunded to the respondent.

2. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under:-

3. Respondent was appointed as a Laboratory Technician on ad-hoc basis with petitioner No.3 - Institute with effect from 3/5/1984 and his services were regularized with effect from 28/9/1984 in the pay-scale of Rs 380-560. After the Fourth Pay Commission Report was submitted and during the implementation of the said Fourth Pay Commission Report, according to the petitioners, there was a genuine error of interpretation of the Fourth Pay Commission recommendations and the respondent was placed in the replacement pay-scale of Rs 1400-2300 though the correct pay-scale in replacement of the pre-revised pay scale of Rs 380-560 should have been Rs 1320-2040. This error was brought to the notice of the petitioners after the Fifth Pay Commission report

was submitted and during the implementation of the Fifth Pay Commission Report, this error was noticed. A show cause notice dated 23/6/1999 was, therefore, issued to the respondent and the orders were issued to place the respondent in the pay-scale of Rs 1320-2040 with effect from 1/1/1986 and recovery was sought to be made in respect of the excess payment made to the respondent. Respondent filed O.A. before the CAT. The O.A. was partly allowed and the Tribunal held that the error committed by the petitioners was purely an administrative error and it was open to the administration to rectify the error after giving opportunity to the respondent. The Tribunal, however, directed the petitioners not to recover the excess amount wrongly paid to the respondent. Being aggrieved by the said impugned order dated 23/4/2003, the Union of India has filed this Writ Petition.

4. We have heard the learned Counsel for the petitioners and the learned Counsel for the respondent.

5. The learned Counsel appearing on behalf of the petitioners pointed out that the CAT had erred in directing the Union of India not to recover the amount which was paid in excess to the respondent. He

submitted that the Tribunal has held that the mistake which was committed by the petitioners was inadvertent and was purely an administrative error. He submitted that having held that the mistake committed was an administrative error, the Tribunal erred in directing the petitioners not to recover the excess amount.

6. The learned Counsel appearing on behalf of the respondent, on the other hand, relied upon the judgment of the Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India and Others reported in **(1994) 2 SCC 521**. It is an admitted position that the pay-scale of the respondent was sought to be rectified almost after a lapse of 11 years. Further, it is also admitted that the error was committed by the petitioners and the respondent was not in any way responsible. It is not the case of the petitioners that the error was on account of wrong representation made by the respondent. The Supreme Court in the case of Shyam Babu Verma (supra) has observed in identical case in para 11 as under:-

> "11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission

> w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January, 1973 it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

In the present case also, the respondent was not at fault in fixation of the pay-scale which was made 11 years prior to the application for rectification which was made by the Union of India. The Tribunal, therefore, in our view has not committed any error of law or jurisdiction in directing the Union of India not to recover the excess amount so paid by the petitioner. There is no reason, therefore, to interfere with the order passed by the CAT.

7. Writ Petition is accordingly rejected. Rule is discharged. Under the circumstances, there shall be no order as to costs.

(V.G.PALSHIKAR, J.)

(V.M. KANADE, J.)